

12735 Lib. Proc II

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-196252.2

DATE: February 7, 1980

MATTER OF: Advanced Marine Enterprises, Inc. DLG02/92

**DIGEST:**

Where initial protest to contracting agency is not timely filed, subsequent protest to GAO must be dismissed as untimely.

Advance Marine Enterprises, Inc. (AME) protests the [rejection of its offer] under request for proposals No. N00024-79-R-6322(Q), Issued by the Naval Sea Systems Command (NAVSEA).

We must dismiss the protest as untimely.

On September 21, 1979, NAVSEA advised AME that it intended to award a contract to another offeror. On the same day, AME asked for a debriefing, which was subsequently held on October 26. During the debriefing, NAVSEA told AME that its proposal was rejected for inadequacies of "personnel," "technical approach," and "facilities," even though its price offer was lower than the successful contractor's.

On November 9, AME mailed a protest to the contracting agency. NAVSEA dismissed the protest as untimely by letter of December 7, which the protester received on December 10. AME filed a protest with our Office on December 21.

AME contends that its protest to the contracting agency was timely and that its subsequent protest here, filed within 10 working days after AME learned that its protest to NAVSEA was dismissed, is also timely. NAVSEA's position is that AME learned the basis for the protest on October 26, during the debriefing, and that the last date the protest could have been timely filed was on November 9. As the protest was not mailed until November 9 and received later, the agency considers it untimely.

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Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest is filed initially with a contracting agency, a subsequent protest to GAO filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered, provided the initial protest was timely filed. 4 C.F.R. § 20.2(a)(1979). Since AME filed its protest here within 10 days of formal notification that its protest to NAVSEA was dismissed, the question whether its protest here is timely depends on whether its protest to NAVSEA was timely.

To be timely, AME must have filed its protest with NAVSEA within 10 working days after it knew or should have known the basis for protest. 4 C.F.R. § 20.2(a) and § 20.2(b)(2). The filing requirement is satisfied only upon actual receipt by the agency. 4 C.F.R. § 20.2(b)(3).

AME alleges that it did not learn the basis for protest during the debriefing. Although the "first inkling" of the agency's decision-making process was learned during the debriefing, AME maintains that it could not know the basis for protest until it analyzed the reason given by NAVSEA for rejecting AME's offer, acquired additional information under the Freedom of Information Act (FOIA) and generally embarked on a fact-gathering process. AME contends that it learned the basis for protest on November 5, at the earliest. By that time, AME states, it had analyzed the capabilities of the successful offeror, and compared its own technical proposal with the solicitation in light of the information gathered at the debriefing, and generally "had its facts squarely in hand."

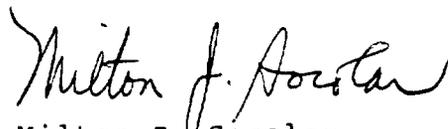
We do not agree with this argument. The major thrust of the protest is that AME's proposal could not reasonably be viewed as inadequate and that in any event award should have been made to AME in light of the significantly lower cost associated with its proposal. We believe the grounds for these assertions were made known at the debriefing, when AME learned that its proposal, while less costly than the awardee's, was regarded as inadequate in three areas, and that it cannot fairly be argued that these grounds arose from review of the information provided

under the FOIA. See A&P Surgical Co. Inc., B-194538, July 10, 1979, 79-2 CPD 22. Moreover, once AME had grounds for protest, it could not toll the timeliness limitation because of its asserted need to analyze the situation or obtain additional information. See e.g., Schreck Industries, Inc., B-194818, June 13, 1979, 79-1 CPD 420.

It may be true, as the protester alleges, that at times following the debriefing, AME assembled information by analysis and further investigation which it thinks supports the basis for its protest; however, this is not a valid basis for extending the time for filing the protest, as our procedures required that the protest be filed within 10 days after the basis for the protest is known or should have been known. Of course, if a protest is timely filed, argument supporting the protest, including supporting "evidence" later acquired, may be submitted during the course of the protest.

Further, we cannot agree with AME's alternative contention that no prejudice resulted from its failure to file a timely protest. AME maintains that time should not be important in this case, pointing out that the agency did not hold the debriefing until 35 days after AME requested it. AME also argues that our timeliness standards should be relaxed. We regard our timeliness standards as extremely important. To raise a legal objection to the award of a Government contract is a serious matter. At stake are not only the rights and interests of the protester, but also those of the public, including other interested parties. Effective and equitable procedural standards consistently applied are necessary so that all the parties have a fair opportunity to present their cases and protests can be resolved in a reasonably speedy manner. Power Conversion, Inc., B-186719, September 20, 1976, 76-2 CPD 256.

Accordingly, the protest is dismissed.



Milton J. Socolar  
General Counsel